IN T HE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO.1/2005

John Vergese. ..... Petitioner.

V/s.

Gracy Vergese. ..... Respondent.

Mr. Sudin M.S. Usgaonkar, Advocate for the petitioner.

Mr. D. Pangam, Advocate for the respondent.

CORAM : V.C. DAGA, J.

DATE : 2ND AUGUST, 2006.

ORAL JUDGMENT :

Heard. Rule, returnable forthwith. Mr. Pangam appearing for the original petitioner/respondent herein waives service. Heard finally by consent of parties.

FACTS

2. The review petitioner is seeking review of the order of the learned Single Judge of this Court dated 5.11.2004 directing the applicant No.1 to deposit an amount of Rs.15,00,000/- with the Registry of this Court to meet the educational expenses of his two children, who are presently under the care of the respondent/original

petitioner. It appears that the respondent filed Regular Civil Suit No. 216/1999/D for declaration and injunction. In the said suit, she filed two miscellaneous applications, details of which are as under :

(i) Civil Misc. Application No.501/1999/D seeking temporary injunction restraining the applicant from dissipating the assets of the company;

(ii) Civil Misc. Application No.650/2000/D for a direction to the applicant to provide maintenance for herself and two children.

3. The trial Court, by two separate orders, both dated 15th March, 2001, dismissed both the said applications. The respondent/original petitioner preferred an appeal to the District Court challenging only one order of the trial Court passed in Civil Misc. Application No. 501/1999/D seeking injunction against the review petitioner; restraining him from dissipating the assets of the Company. However, the said appeal came to be dismissed.

4. Being aggrieved by the said order of dismissal, the original petitioner/ respondent herein filed the writ petition under Articles 226 and 227 of the Constitution challenging the orders of the Court below.

5. Undisputed facts of the case narrated above, makes it clear that the present writ petition is directed only against one order

i.e. order refusing to grant injunction to prevent alienation of the properties of the company. In other words, the order refusing grant of maintenance is neither the subject-matter of this writ petition nor challenged in any other proceedings with the result the said order has become final and conclusive.

6. The writ petition filed by the original petitioner/respondent herein Ms. Gracy Vergese contained the following prayer clauses :

> " (A) This Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned orders dated 15/3/2001 and 17/4/2004;
>
> (B) That pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to restrain the Respondents from alienating or creating any third party right in respect of the immovable properties of the respondent No.1.
>
> (C) For ad interim ex parte relief in terms of Prayer Cause (B) herein above;
>
> (D) For such other and further reliefs that this Hon'ble Court deems fit and proper. "

7. The learned Single Judge of this Court after hearing the parties,

was pleased to issue `Rule'. He while considering prayer for interim relief, was pleased to grant the same in the following terms, the relevant extract reads as under :-

> " .....
>
> 3. Hence, Rule.
>
> 4. Interim relief in terms of prayer clause (B), reproduced below, and in addition the respondent no.1 is directed to deposit an amount of Rs.15,00,000/- (rupees fifteen lakhs) with the registry of this Court so as to meet the educational expenses of his two children Marveil and Calvin, who are presently under the care of the petitioner.
>
> > "(B) That pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to restrain the respondents from alienating or creating any third party right in respect of the immovable properties of the respondent no.1."
>
> 5. Petition be listed for final hearing in the week commencing from 24th January, 2005. Mr. Usgaokar waives services for respondent nos. 1 and 2 and Mr. Badrinarayanan waives service for respondent no.3."

8. The review petitioner, as stated hereinabove, is seeking review of the above order to the extent it directs deposit of Rs.15,00,000/- with the Registry for being paid as educational expenses of children.

SUBMISSIONS :

9. The review petitioner is contending that the interim relief granted in addition to prayer Clause (B) is running beyond the scope of Clause (B). In his submission, such interim relief could not have been granted by this Court in the absence of any specific prayer in that behalf. In other words, according to him, part of the interim relief is travelling beyond the scope of interim prayer; text of which is reproduced hereinabove. He further submits that the interim prayer is always in the aid of final relief. That the purpose of interim relief is to enable the Court to preserve subject matter of suit or appeal as the case may be, so long as the rights of the parties are not adjudicated. He, thus, submits that the part of the interim relief granted in favour of the respondent, directing deposit of Rs.15,00,000/- to meet the educational expenses of two children, is beyond the scope of the prayer which was made for interim relief. He, thus, submits that the order under review suffers from an error on the face of record and needs correction in review jurisdiction.

PER CONTRA :

10. The learned Counsel appearing for the respondent/original petitioner while supporting the above part of the order of interim relief urged that the order was a consent order passed on the basis of the statement made by the present review petitioner himself. He,

thus, submits that this Court should not exercise review jurisdiction. However, learned Counsel for the respondent does not dispute settled proposition of law that interim relief cannot travel beyond the scope of the prayer for interim relief and that the interim relief can always be granted in the aid of final relief.

CONSIDERATION :

11. Having heard rival parties and having considered the material on record, it is not in dispute that the interim relief cannot travel beyond the scope of petition as well as prayer clauses incorporated therein. In the case of **State of Orissa** v**. Madan Gopal Rungta,** AIR 1952 SC 12, the Constitution Bench of the Supreme Court clearly spelt out contours within which the interim relief can be granted. The Court said that :

> "an interim can be granted only in the aid of, and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceedings. If this be the purpose to achieve which power to grant temporary relief is conferred, it is inconceivable that where the final relief cannot be granted in the terms sought for because the statute bars granting of such a relief ipso facto the temporary relief of the same nature cannot be granted. "

To illustrate this point, let me take the the relief which the respondent

/original petitioner seeks in the writ petition. The order which is subject-matter of the challenge in the writ petition is an order passed in Civil Misc. Application No.501/1999/D; whereby prayer for temporary injunction restraining the applicant from alienating the assets of the company came to be refused by the trial Court. The petition filed is directed against this order of rejection of injunction . Even if the petitioner (the respondent herein) succeeds in the writ petition in toto, even then the interim relief granted by this Court directing deposit of Rs.15,00,000/- cannot be granted in favour of the petitioner. As a matter of fact, the very same relief was claimed by the petitioner in the trial Court in Civil Misc. Application No.501/1999/D which was rejected by the trial Court. No appeal or petition is preferred against this order of rejection. The said order has become final and conclusive between the parties.

12. Needless to mention that an interim relief is granted to a person on the footing that that person is prima facie entitled to the right on which the main relief is based as well as the interim relief. That relief is granted as an interim measure till the disposal of the suit in which is to be investigated validity of the claim of right that has been put forward. If no such claim has been put forward in the suit or proceedings or petition, it means that there can be no occasion for investigation of such a claim in the proceedings, or petition or suit, there can be no justification for the grant of an interim relief which will

not only just lapse on the termination of the proceedings, but which will leave the parties in the same position in which they were before the institution of the suit, in the course of which the interim relief was sought and obtained. That is not the scope of grant of interim relief.

13. In the above view of the matter, order dated 5th November, 2004, to the extent it travels beyond the scope of the petition or the prayer for interim relief, is liable to be reviewed in exercise of power of review of this Court. Consequently, bracketed portion of the order marked as "A" reading as under, is liable to be deleted from the order dated 5.11.2004.

> A | "and in addition the respondent no.1 is directed to deposit an amount of Rs.15,00,000/- (rupees fifteen lakhs) with the registry of this Court so as to meet the educational expenses of his two children Marveil and Calvin, who are presently under the care of the petitioner."

Order accordingly.

14. In the result, the review petition is allowed. Rule is made absolute in terms of this order, with no order as to costs.

V.C. DAGA, J.

ssm.